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IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/23

Addendum

Visit to Germany

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INTRODUCTION

1. From 17 to 27 September 1997, the Special Rapporteur on the question of religious intolerance, in accordance with his mandate, visited Germany at the invitation of the German Government.

2. In the course of his visit, the Special Rapporteur travelled to Berlin (17, 18 and 20 September), Potsdam (19 September), Lutherstadt-Wittemberg (21 September), Magdeburg (21 September), Bonn (22-24 and 27 September), Munich (27 September), Karlsruhe (26 September) and Frankfurt (27 September).

3. He held talks with official representatives at the federal and Land levels, including senior political leaders and senior officials and experts in the fields of foreign affairs, justice, the interior, labour and social affairs, education, youth and sports, science, research and culture, finance, the family and women, and elderly persons. Consultations were also held with members of parliament, presidents of parliaments, including the President of the Bundestag, and members of the German Bundestag's Study Commission on sects and so-called psycho-groups, and with the Federal Constitutional Court and Federal Labour Court.

4. The Special Rapporteur also talked to representatives of the Catholic and Protestant Churches and the Jewish, Orthodox and Muslim minorities, and with the Bhagwans, Baha'is, Hare Krishnas, Mormons, Jehovah's Witnesses, the Church of Unification and the Church of Scientology. Non-governmental organizations, in particular those providing assistance to victims of sects and psycho-groups, and academics and eminent independent persons were also consulted. Places of worship were visited.

5. The Special Rapporteur wishes to thank the German authorities for their excellent cooperation during the preparations for the visit and during the visit itself. He is also very grateful to the various senior governmental and non-governmental spokesmen whom he met.

6. During his visit the Special Rapporteur devoted particular attention to the study of legislation relating to tolerance and non-discrimination in the field of religion or belief, its enforcement and the policy in force.

I. LEGISLATION RELATING TO TOLERANCE AND NON-DISCRIMINATION IN THE FIELD OF RELIGION OR BELIEF

A. General constitutional guarantees relating to freedom of religion and belief

7. Freedom of religion and belief is guaranteed by article 4 of the Constitution in the following terms:

> "(1) The freedom of belief and conscience and the freedom to profess religious and philosophical beliefs are inviolable.
>
> "(2) The free practice of worship is guaranteed."

8. This freedom comprises both the individual right of each person to believe in what he wants and the right not to have a belief. It also embodies the right to behave in accordance with one's belief. In addition, article 4, paragraph 3, of the Constitution recognizes the right of conscientious objection to military service.

9. Article 4 of the Constitution does not expressly impose restrictions on these rights and freedoms as regards their manifestations, but obviously they do not apply without limits. These limits originate from the implications of the Constitution, notably concerning the protection of the fundamental rights of others (cf. protection of human dignity, Constitution, art. 1, and right to life and physical integrity Constitution, art. 2, para. 2) or relating to guarantees for common property specially protected by the Constitution. These limits must not be disproportionate to the goals pursued.

B. Constitutional guarantees specific to relations between the State, religion and belief

10. The constitutional guarantee of religious freedom is supplemented and spelled out by article 140 of the Constitution, which incorporates articles 136, 137, 138 and 141 of the Weimar Constitution of 11 August 1919 and regulates relations between the State, the Churches and religious communities. 1/ Article 7, paragraphs 2 and 3, of the Constitution guarantees religious instruction in State schools.

11. As reflected in the constitutional provisions since the Weimar Constitution, a separation between religions and the State has been introduced. However, these provisions do not establish the principle of an absolute separation excluding all possibility of cooperation between religion and State. A substantial degree of cooperation has been maintained and manifests itself in various ways: granting of the status of a legal person in public law, protection of church property intended for religious purposes, guarantees to religious entities recognized as public-law communities of the right to levy taxes, practice of worship in the army, hospitals, prisons and other public institutions, and religious instruction in State schools. The rights and advantages arising from this cooperation and benefiting religions with the status of a legal person in public law, including the Catholic and Protestant Churches, are sometimes perceived, notably by authorities in the Länder of the former German Democratic Republic (GDR) and by minority groups and communities in the field of religion and belief, as privileges accorded by the State to the major Churches (such as the levying of tax by the public authorities for the benefit of the major Churches, which are sometimes called "the churches of officialdom"). However, as stated below in section C, these advantages are not related to the religious character of the Church, but to recognition of the fact that it is in the public interest. Other religions recognized as being in the public interest, including that of the Jewish community, also enjoy these rights. In addition, in the specific case of the Protestant and Catholic Churches (the latter formerly having had their assets confiscated without payment of the prescribed indemnity), the benefits granted tend to be regarded as compensation.

12. The principle of neutrality of the State remains, in spite of what has been said above, particularly important in Germany. The State does not, in

fact, have to identify itself with any religious or philosophical belief or to encourage any particular sympathy - or antipathy - towards it. Moreover, the State does not have to judge the intrinsic value or truth of any religion or belief. This principle of neutrality also requires a fundamental attitude of tolerance and equitable treatment of all religious and philosophical groups within the context and limits of the public interest. The principle of State neutrality, associated with the principle of positive separation of the State and the Church, which cooperate in certain fields, sometimes encounters difficulties of interpretation in certain Länder, in connection, for example, with the question of religion in State schools, whether it concerns the crucifix case or religious education.

13. In the crucifix case in Bavaria, the Federal Constitutional Court, in its so-called "crucifix decision" (of 16 May 1995), declared an internal primary school regulation incompatible with article 4, paragraph 1, of the Constitution and accordingly rescinded that regulation, inter alia invoking the State's duty of neutrality. According to this decision, the placing of a cross or crucifix on the wall of a classroom in a State school, other than a religious school, constitutes a breach of the provisions of this article of the Constitution. However, the Bavarian authorities, expressing their disagreement on this point, have enacted a law on teaching and education which is perceived as a compromise solution. In accordance with article 7 of this law, given the historical and cultural characteristics of Bavaria a cross may be present in State schools, in order that the objectives of the Constitution with regard to the realization of Christian and Western values may be attained, while preserving freedom of belief. If the presence of this cross is challenged on serious and reasonable grounds relating to faith and belief, an understanding must be sought. If no agreement is arrived at, the head of the school must try to resolve each individual case with a view to ensuring respect for the freedom of belief of the parties and in such a way that the beliefs of all persons are considered in a balanced manner and, to the fullest extent possible, the will of the majority is taken into consideration. This law has been ratified by the Bavarian Constitutional Court and submitted to the Federal Constitutional Court. The Bavarian authorities have stated that, since the decision of the Federal Court, out of nine challenges in primary schools four have resulted in the withdrawal of the crucifix and four in a compromise; in the other case proceedings are still under way. In secondary schools, out of four challenges two have resulted in withdrawal of the crucifix and the two others in a compromise. It should be noted that the authorities of the Länder in the former GDR, where religious feelings cannot be said to run high, interpret the presence of the crucifix in State schools as contrary to the neutrality of the State.

14. In accordance with article 7, paragraphs 2 and 3, of the Constitution, religious education is guaranteed in State schools. It is financed by the State, which provides the necessary teachers, while the content of the education is the responsibility of the Churches. Religious instruction, which in accordance with article 7 of the Constitution is an ordinary subject in almost all State schools, cannot be treated as a secondary or optional subject. However, in the Länder of the former GDR, this constitutional provision sometimes creates problems because of the very limited concern with religious matters. The authorities are in fact discussing the status of religious education in State schools, which some people consider should be

optional. An exception to the Constitution is therefore desired in some quarters, notably in order to ensure greater neutrality of the State. However, in the Land of Brandenburg, parents of schoolchildren have initiated legal proceedings against the authorities in order to secure the establishment of religious instruction as an integral part of the curriculum, in accordance with article 7 of the Constitution.

15. The interpretation of the constitutional guarantees relating to the State in the area of religion and belief continues to attract attention and arouse discussion.

16. As has already been noted, the principle of neutrality is not equivalent to indifference on the part of the State. This is apparent through the limits on freedom of religion and belief as described in section A. According to the constitutional law in force, the mere fact that a community lays claim to a particular religion and regards itself as a religious community does not, ipso facto, create the right to exercise the freedom set forth in article 4, paragraphs 1 and 2, of the Constitution. According to the German authorities, there must in fact be a religion or a religious community characterized by a spiritual basis and its external manifestation. It is for the public authorities, i.e. in the final analysis the courts, to verify the justification for challenges in the event of a dispute. The intervention of the State remains a possibility, particularly in the area of criminal proceedings when there is a suspicion of unlawful activities concealed, actually or falsely, by questions of religion or belief, since these questions do not in themselves have to be the subject of any substantive assessment.

C. Constitutional guarantees specific to cults

17. As regards the status of cults, in accordance with article 140 of the Constitution (Weimar Constitution, art. 137, para. 2), a cult is granted, through the procedures in force, the status of a legal person in public law when, in the light of its statute and the size of its membership, it gives every indication of durability. Other cults acquire legal capacity in private law.

18. The status of legal person in public law gives rise to certain rights, in particular the right to levy church taxes through the services of the State and the right to tax advantages and exemptions (notably exemption from corporate tax, land tax and inheritance tax) and exemptions from regulations on costs and tariffs. The authorities emphasize that these advantages and exemptions are granted not because of the religious character of the cult, but because it serves the public interest.

19. In any application for public-law status, it is also necessary to take account of the conditions specified in article 140 of the Constitution and to ensure respect for the legal order of the State. This additional condition originates from the decision of 26 June 1997 rendered by the Federal Administrative Tribunal in the so-called Jehovah's Witnesses case. The Tribunal decided that the Jehovah's Witnesses could not be recognized as a legal person in public law. According to that decision, public-law status comprises, for the religious entities concerned, an offer of cooperation by the State, which thus grants privileges that are normally reserved for itself

alone. This cooperation is intended to benefit the religious entity in question to the extent that its activities contribute to the service of the State and to the public interest. Consequently, this religious entity must not call in question the foundations of the State. According to the Tribunal, the Jehovah's Witnesses, through their blanket refusal to take part in public elections, are opposed to the principle of democracy. However, under the Constitution, the public legitimacy essential for public action is primarily conferred through elections, and notably parliamentary elections. By refusing in principle to take part in this manifestation of public life, the Jehovah's Witnesses undermine the basic legitimization of the State and, consequently, cannot be recognized as a community in public law. The German authorities, including the Federal Minister of Labour and Social Affairs, have nevertheless stressed that the withholding of such status did not signify non-recognition of the Jehovah's Witnesses as a religious community. The Jehovah's Witnesses have, however, exercised their right of appeal to the Federal Constitutional Court (see II.C).

20. In the case of the applications by the Church of Scientology for the granting of public-law status, Supreme Court decisions are still pending. In the course of one procedure, the Federal Labour Court has had to deal with the question whether a Scientology employee was a worker within the meaning of the right to work. In this context, the Court decided that the Scientology organization was an economic undertaking (see II.D).

21. Recognition of the status of legal person in public law is a question also facing Muslims and, according to the authorities, is being hampered by the absence of a single spokesman for the whole of this community (see II.B).

22. Apart from the question of the status of cults, the Constitution, in article 140 (Weimar Constitution, art. 137, para. 3), guarantees the right to freedom of management. Every cult can deal with its own affairs in an autonomous manner, irrespective of its legal status. This autonomy applies to religious education, appointment to office, religious service and the organization of charitable activities.

II. IMPLEMENTATION OF LEGISLATION AND POLICY RELATING TO TOLERANCE AND NON-DISCRIMINATION IN THE FIELD OF RELIGION OR BELIEF

23. The Special Rapporteur has endeavoured to give a description of the situation with regard to religion and belief, and to examine the situation of religious minorities, and other groups and communities in the field of religion and belief, and the situation of the Church of Scientology.

A. Situation with regard to religion and belief

24. The Special Rapporteur was unable to obtain recent statistics on the religion or belief of Germans or persons living in Germany, since no official statistics are compiled on these questions.

25. According to estimates gathered by the Special Rapporteur, Christianity constitutes the majority religion by number of believers. The Protestant and

Catholic churches are estimated to comprise 28.5 million and 27.5 million members respectively, in other words about 35 per cent of the population for each Church.

26. In this connection, a distinction should be made between the religious situation in the Länder of the former Federal Republic of Germany (FRG) and in those of the former GDR. The reunification of Germany has had its repercussions on the state of religions and beliefs because of the limited concern with religion in the Länder of the former GDR.

27. The two major Churches are reported to have experienced not only a sharp decrease in religious worship, but also a decline in membership in recent years.

28. However, the Catholic and Protestant churches continue to be the dominant Churches in Germany, historically linked to the State, and subjected to a positive separation under the Weimar Constitution and the subsequent Constitution ensuring cooperation with the public authorities in common affairs, in accordance with their status as legal persons in public law (cf. Part I.B and C).

29. On the question of religious minorities, the Muslim community, whose ethnic origins are diverse (North Africa, Middle East, Asia) but mostly Turkish, is estimated to number 2.5 to 3 million. It should be noted that this figure includes some 100,000 native Germans. Muslims manifestly represent the largest religious minority in Germany.

30. There has reportedly been a substantial increase in the size of the Jewish community, which had about 50,000 members in 1994 (Statistisches Bundesamt, Statistisches Jahrbuch 1995), owing to the arrival of many Jews form the former Soviet Union (see paragraph 36 below).

31. The Orthodox community, which is of very varied ethnic origin (Armenians, Bulgars, Copts, Greeks, Romanians, Serbo-Croats), is estimated at approximately 1 million members.

32. The estimated membership of the other groups and communities in the field of religion and belief is given below:

Jehovah's Witnesses	180 000 members
Mormons	39 000 members
Baha'is	6 000 members
Hare Krishna	5 000 members
Unification Church	850 members

The Church of Scientology states that it has 30,000 members.

33. Lastly, the number of people belonging to no religion is estimated at 16 million.

B. Situation of religious minorities

(a) Jewish minority

34. The Jewish community enjoys a privileged situation in the area of religious freedom. It has the status of a legal person in public law and therefore enjoys the rights and benefits deriving therefrom. The religious instruction of Judaism is guaranteed. Private schools and places of worship exist in sufficient numbers. For the purposes of the broadcasting of religious programmes, the Jewish community has the right to appropriate broadcasting time on the public and private radio networks throughout the country. It also has the right of representation on the broadcasting control bodies, in accordance with the legal provisions on broadcasting.

35. Public financial assistance is granted to the Jewish community. In the Land of Saxony-Anhalt, for example, in 1997 public funds amounting to DM 1,619,223 were paid to the Regional Association of Jewish Communities.

36. Special measures have also been taken by the authorities for the benefit of Jews coming from the former Soviet Union. On 9 January 1991, the heads of government of the Federation and the Länder decided to facilitate the entry of Jewish emigrants from the former Soviet Union, without limitation as to numbers. Admission is effected pursuant to the law concerning measures to be taken with regard to refugees admitted in the context of humanitarian assistance (law on refugees subject to quota). The desire of the authorities is to permit the maintenance of Jewish communities in Germany. As of 30 June 1997, 64,971 persons were reported to have entered Germany under the above-mentioned procedure, in addition to the 8,535 persons who arrived at an earlier stage, or outside that procedure. These Jewish immigrants receive integration assistance, the cost of which is borne by the Bund.

37. As was stated by Mr. Ignatz Bubis, representative of the Jewish community, Jews in Germany are not subjected to any official discrimination. Some acts of vandalism have nevertheless been reported, including the desecration of Jewish cemeteries. The number of these incidents, which are attributable to extreme-right groups, nevertheless remained stable in 1997. The Special Rapporteur was also informed of internal problems in the Jewish community, namely, the integration within the community of Jews from the former Soviet Union who had virtually no knowledge of the tenets and practice of Judaism. To sum up it would appear that the situation of the Jewish community in the area of religious freedom is very satisfactory and receives the firm support of the authorities.

(b) Muslim minority

38. The representatives of the Muslims stated that they patently enjoyed freedom in religious matters. Generally speaking, religious activities are not impeded by the authorities, despite the incidents which occur from time to time in certain places relating to the building of mosques, the management of Koranic schools and the arrival of imams or teachers from abroad. Despite the difficulties, inter-religious dialogue is encouraged and manifests itself notably through the establishment of Islamic-Christian associations.

39. However, a number of specific problems were brought to the attention of the Special Rapporteur. All the Muslim representatives considered the granting of the status of legal person in public law to be a priority issue, so that the community could enjoy the benefits and rights granted to the dominant religions, the Jewish community and other groups such as the Mormons. The authorities replied that it had not yet been possible to grant this status because of the divisions within the Muslim community and hence the non-existence of a single spokesman for the whole community. They pointed out that the non-granting of that status in no way meant that Muslims could not enjoy the constitutional guarantees in the area of religious freedom. The State Minister for Foreign Affairs said that he favoured the extension of the advantages conferred by legal person in public law status to the Muslim communities and considered that that process was under way.

40. According to the Muslim representatives, legal person in public law status would resolve the current problems relating to the fact that Islam is not taught in State schools. In this connection, attention was drawn to the need for inter-religious education facilitating the integration of Muslims and the dissemination of the values of tolerance within society. In the absence of such education, the Muslim community currently has private Koranic schools and, in particular, Turkish teaching institutions. However, one of the serious problems relating to the Koranic schools was said to be that they had to confine themselves to religious education, sheltered from intolerance and the repercussions of partisan policies. The authorities, including the Federal Minister of Labour, the Minister of Justice and the State Minister for Foreign Affairs, said that the teaching of Islam in State schools represented the best solution. They added that the prevailing view in Germany was that the practice of Islam should be encouraged through German Muslim institutions not accountable to foreign entities.

41. The granting of legal person in public law status would also enable Muslims to benefit from public financing, notably for the purposes of religious instruction and places of worship, and would limit any dependence on foreign financing, which, according to certain spokesmen, was currently provided by Saudi Arabia and Libya in particular.

42. Lastly, such legal status would permit the more effective integration of Muslims within German society.

43. The Muslim representatives mentioned other recurrent problems, which, according to the Länder, occurred sporadically and took the form of general public opposition to plans for the building of mosques, calls to prayer, the slaughter of animals, the wearing of head scarves and the non-participation of girls in mixed sporting activities, notably swimming. It was nevertheless stressed that, in the face of these situations, the authorities often demonstrated genuine pragmatism and acted on a case-by-case basis. In order to prevent these problems, greater acceptance of Islam within German society was needed. The authorities and the Muslim representatives themselves said it was also the responsibility of the Muslim community to make Islam better known, despite the inherent difficulties of Muslims in Germany, who at the outset had been mainly migrant workers and not highly educated. Initiatives aimed at the better understanding and recognition of Islam are to be welcomed, in particular the establishment, by the Office of the Commissioner for

Foreigners' Affairs in Berlin, of an Islamic study centre and the publication of a brochure on Islam and an inter-cultural calendar including Muslim holidays.

44. It is also essential that the media, and the popular press in particular, should cease portraying a negative image of Islam and Muslims, who are too often associated with religious extremists.

45. Religious extremism, although existing only in small minority groups in Germany, must be treated with appropriate vigilance by the authorities. The latter, like Muslim leaders, emphasized the existence of a minority extremist trend opposed to any integration within society, often using religion as a political tool, and sometimes expressing itself in a violent form within the Muslim community, such as the recent murder of an imam in Berlin because of internal conflicts. Muslim representatives stated that it was necessary to ensure proper religious leadership and that they were trying to prevent the arrival from abroad of imams who were uneducated, not to say intolerant, for example through an agreement with Turkey authorizing the sending of imams only after scrutiny of applications by Muslim leaders in Germany.

46. According to non-governmental spokesmen, Islam should be given a wider public forum and should not be confined strictly to the private domain; that could in certain circumstances promote clandestinity, which was in no one's interest.

47. Lastly, the Muslim leaders interviewed by the Special Rapporteur emphasized that they desired the integration of Muslims, but certainly not their assimilation.

C. Other groups and communities in the field of religion and belief

48. During his visit, the Special Rapporteur had interviews with representatives of the Baha'is, Mormons and Jehovah's Witnesses and of the Bhagwans, Hare Krishna and the Unification Church. He also collected information on the Charismatic Christians, the Community of Universal Life, Transcendental Meditation, Fiat Lux, etc. Finally, he had consultations with associations of victims of sects, the Bundestag Study Commission on sects and psycho-groups, and the authorities.

49. In these talks, one and the same group or community might be described, depending on whom he was talking to, as a new religious movement, a religion, a sect, or alternatively a psycho-group. The Special Rapporteur wishes to point out that international law has no legal definition of the concept of religion or, consequently, of new religious movements. Similarly, the international human rights instruments do not cover the concepts of sect or psycho-group.

50. Internationally, particularly in Europe and above all in Germany, the debate focuses on sects, mainly because of a number of factors:

(i) Competition in the area of religion and belief between traditional religions on the decline and a multitude of new groups and communities claiming the status of religions, but often described as sects, or psycho-groups or commercial enterprises;

(ii) Changes in society, which mean that established values are yielding other values, including a money-centred materialism which sometimes tends to treat religion rather like a product;

(iii) Public opinion alarmed by sometimes crude popular reporting of abusive exploitation of their followers by these sects or psycho-groups and by extraordinary events, such as collective suicides;

(iv) State intervention, particularly through the establishment of parliamentary commissions of inquiry (cf. Germany, Belgium, France, etc.) in response to public opinion.

51. The question is often raised of how to deal with the sect problem at a time when beliefs seem to be more and more exposed to deregulation and when the certainties of yesteryear seem to be giving way to a multiplicity of creeds with a shifting pattern of membership, in which relativism is often held up as an absolute value. The problem is made still more complex by the fact that their capacity for action and reaction seems to be inexhaustible, whether in terms of their faith, the law or their finances.

52. In general however, we find that there is confusion about the groups and communities mentioned above, which are often labelled as dangerous sects or commercial enterprises. Furthermore, although originally, from the standpoint of the history of religion and the social sciences, the concept of a sect was a neutral one and referred to a community of persons forming a minority within a religion who broke away from it, today it has pejorative connotations and the term "sect" is often associated with danger. The confusion is even greater in the case of the Church of Scientology, often described as a sect and a commercial enterprise, although those two ideas are contradictory, inasmuch as the term "sect" initially has a religious dimension, unlike "commercial enterprise", and that whatever happens a religion is not a business.

53. In order to clarify the situation and avoid any confusion, the Special Rapporteur wishes to stress that a distinction should be made between a "sect", on the one hand, and a "psycho-group", on the other, and to point out that among the groups described as sects, some are the propagators of a religion while others are less so, or not at all, so that one has to be very cautious and attentive in this field in order to avoid both intolerance based on religion or belief and the exploitation of freedom of religion and belief for purposes alien to it. The Special Rapporteur would therefore like to report on the information and explanations he obtained from the Bundestag Study Commission and the government authorities, from victims' associations

and from the groups and communities concerned, both those long established in Germany (Mormons, Jehovah's Witnesses, etc.) and those that are of more recent origin (Unification Church, etc.).

54. The representatives of the Study Commission explained that it had been set up on the basis of article 4 of the Constitution, following complaints by victims and parents of victims of sects and psycho-groups, and by religious organizations not wishing to be equated with the groups and communities complained of.

55. It was stated that the Commission's work gave rise to misunderstandings in these groups and communities, which felt themselves to be under pressure because of the Commission's very existence and the lack of understanding of its mandate. It was pointed out that the Commission's task was not to limit religious freedom, to pass value judgements or to define religions, but, on the contrary, whatever the religion or belief, to protect human rights by collecting and analysing information on possible dangers from sects and psycho-groups. It also had to take the heat out of the debate on sects and psycho-groups by ensuring more open information on the subject and to make recommendations to Parliament.

56. The federal and Land authorities explained that they had been confronted since the mid-1970s with the phenomenon of what are known as sects of young people and sectarian groups. The State's intervention is due, on the one hand, to a revival in these groups' activities and, on the other, to complaints by the public about negative experiences in this area. The focus of concern is the potential danger that these groups could represent for adolescents' personal development and social relations, leading to their dropping out of school and vocational training, radical changes in personality, individual forms of dependence, lack of initiative and difficulties of communication, often aggravated by the group structure characteristic of certain communities, but also to material losses (of a financial nature) and psychosocial harm.

57. To draw attention to the potential dangers, both for the individual and for society, the Federal Government has launched a large-scale information and education campaign designed to increase public awareness and stimulate a critical discussion on what the sects and sectarian groups have to offer.

58. It was added that the obligation to be neutral did not mean that the State was obliged to accept, without reacting, everything done in the name of an alleged religious or philosophical belief, particularly as far as criminal proceedings were concerned. Reference is made here to intervention by the State outside the freedom of religion and belief or within the limits of manifestations of these freedoms (as described in part I. A and B). The State's obligation to be neutral applies to information produced by the authorities on the groups and communities in question, that is, objectivity of information (see I. B). The authorities explained that the information collected by the State - issued, for example, in the form of pamphlets for the public - combined information from sects and sectarian groups and information on the groups. If there is any question about this information, any interested party can take the matter to court. For example, the Community of Universal Life lodged a complaint in 1993 against the information given

about it in a pamphlet entitled "Sects and psycho-groups in Germany". The Administrative Tribunal dismissed the case on the grounds that the information given did not violate the law. In a similar case, complaints by Transcendental Meditation were rejected in various proceedings which went as far as the Constitutional Court.

59. According to the authorities, in order to enable the State to discharge its obligations in the matter of protecting citizens, the law gives it the right, which derives directly from the Constitution, to take a position in relation to the public and to issue recommendations or warnings, for religious and philosophical communities among others. The Federal Government must, however, respect the following restrictions: the principles of necessity and due proportion; the principle of equity (appropriate, necessary and reasonable means), not acting on the basis of inadequate grounds; value judgements to be based on a body of facts which essentially have to be assessed correctly and at their true value.

60. The seriousness of the threat to the public interest and to the rights protected by the Constitution, and the content and function of the warning, determine the extent and the limits of the specific information provided by the State.

61. As a whole, the problems of sects and sectarian groups involve the competence of the Federal Government, the Länder and the communes, which cooperate closely. An interministerial working group and a round table attended by representatives of the Federal Government and the Länder provide an opportunity for regular exchanges of experience and coordination of activities. Apart from these official arrangements, there are contributions from church representatives responsible for questions relating to sects and religion, parents' action groups institutionalized at the federal, regional and local levels, consultative bodies in the sector of private and public social work, and other social groups and bodies. The authorities have, however, stated that the State is not out to become involved in any kind of competition in the area of religion and belief. According to officials and members of the Bundestag Study Commission, similar regulatory provisions ought to be adopted with regard to psychotherapists and psycho-groups as part of consumer protection. In other words, products offered to the public in return for payment should comply with the appropriate regulations, including those on consumer protection.

62. The associations for victims of sects and psycho-groups described their activities relating to mutual aid, counselling and information, and social rehabilitation with victims and those close to them and with anyone wanting to get away from the groups and faced with problems of financial exploitation, psychical and psychological dependence, etc. It was explained that there was no question of challenging the freedom of religion and belief, but merely abuses in the manifestations of that freedom. Mention was also made of the need to regulate the psychotherapy market, where financial motives were often concealed under a religious label.

63. As regards the groups and communities dealt with in this part of the report, the Mormons have the status of a legal person in public law with the rights and advantages that that implies, including tax exemptions. As far as

the levying of a church tax is concerned, the Mormons have decided not to seek to join the system. They do not encounter any difficulties in the field of religious education, since their children have freedom of choice, any more than with the construction of places of worship and circulation of their publications. They are also quite free to engage in door-to-door proselytizing activities. The Mormon representatives said they did not suffer any persecution. However, as a consequence of the present debate on sects and psycho-groups, they say there is a climate of mistrust towards all religious minorities. This situation is said to be the result, in particular, of the intervention of the major Churches and of their staff responsible for sects, who are regarded as specialists and act as an interest group in dealings with the State in order to counter competition from other groups and communities by labelling them all, without distinction, as sects or psycho-groups. This climate is also, according to the Mormons, kept up by the media. In their view, the most disturbing aspect is State intervention in the form of pamphlets on the sects, also covering the Mormon community. They explained that the information on them contained in the pamphlets was accurate, but that their inclusion under the heading of "sect" constituted defamation. The Mormons consider this to be an abuse of the State's neutrality. Concerning the Bundestag Study Commission, they said that they had no problem with its members, but felt the effects of the existence of such a commission because it led to confusion about minorities, sects and psycho-groups.

64. The Jehovah's Witnesses, as stated in part I. C, are regarded as a religious community, but have been denied the status of a legal person in public law by the German courts. Admittedly, this refusal does not mean, according to the authorities, that they are not recognized as a religious community. However, according to the Jehovah's Witnesses, in the lower echelons of the administration and in the media, this court decision is used in order to portray them as a sect. The Jehovah's Witnesses also state that they are victims of a climate of intolerance created by the discussions on sects going on in the Bundestag Study Commission and by the activities of the major Churches' advisory bureaux on sects. Official information pamphlets on sects refer the reader to these advisory bureaux. According to the Jehovah's Witnesses, the State is thereby in a sense abandoning its neutrality, insofar as it is favouring the dominant Churches in the competition between religions. Furthermore, according to the Amtsblatt des Hessischen Kulturministeriums No. 8/97 of 15 August 1997, "documentation, information and other publicity material from presumed sects and psycho-groups, generally sent free to schools and other educational institutions, must not be passed on by the school ... to teachers or to schoolchildren or their parents, nor must it be placed in school libraries or teachers' libraries". However, according to the Jehovah's Witnesses, video recordings of tendentious television broadcasts are shown in schools and the "dangerous aspect" of their community is emphasized in discussions with pupils.

65. This atmosphere of distrust, and even latent intolerance, because of the factors mentioned above, is also said to affect the Baha'i community.

66. The Unification Church says that it suffers from discrimination. The German Government refused the founder of the Unification Church, the Reverend Sun M. Moon, and his wife Hak J. H. Moon entry into its territory in November 1995 on the grounds that they constituted, according to

representatives of the community, "a threat to public order" and as such were said to fall into the category of persons who should be refused entry by the countries that have signed the Schengen Treaty. The Special Rapporteur was informed by the German authorities that the ban was based on the provisions of the legislation on aliens and that the courts would have to decide whether it should be upheld. The Unification Church has also been denied tax exemption, because, according to its representatives, a "lower court" would not agree to hear testimony from experts on the Unification Church, but based its decision on the evidence of a financial official, who had decided that the community was political in nature. State publications giving information on the so-called sects and psycho-groups were said to be defamatory and wrong about the Unification Church and based solely on the opinions of opponents of the community; the representatives of the Unification Church regarded this as a departure from State neutrality. The pamphlets in question, moreover, were circulated in State schools in order to denigrate the Unification Church. The representatives of the Unification Church expressed their concern about the Bundestag Study Commission, which they said was composed of people who were anti-sect and belonged to traditional religions and which was aiming at the adoption of new legislation by which their community, among others, would be regulated and placed under surveillance. Finally, according to its representatives, the Unification Church encountered an atmosphere of intolerance as a result of the behaviour of the major Churches and the State, an atmosphere which was fed by the media.

67. The representatives of Hare Krishna and the Bhagwans also said that they encountered a climate of intolerance because of the factors discussed above and expressed fears about the possibility of limitations on their activities.

68. As far as the Community of Universal Life, Transcendental Meditation and Fiat Lux are concerned, the Special Rapporteur did not have an opportunity to meet their representatives, but obtained information from non-governmental sources, which describe them as psycho-groups.

D. Church of Scientology

69. The Special Rapporteur had interviews with representatives and followers of the Church of Scientology and with the German authorities, representatives of religious minorities and other groups and communities in the field of belief and religion and non-governmental organizations, including those for victims of sects and psycho-groups.

70. The representatives of the Church of Scientology stressed that it was a religion and fell within the international definition of a religion formulated in the two studies on religious freedom prepared by the first two Special Rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (United Nations publications, sales Nos. 60.XIV.2 and 89.XIV.3 respectively), by the third Special Rapporteur in his working paper (E/CN.4/Sub.2/1989/32), and by the Human Rights Committee in its general comment 22 of 20 July 1993 on article 18 of the International Covenant on Civil and Political Rights.

71. They said that the Church of Scientology and its members were the victims of discriminatory measures by the Government and that the German

authorities tried to justify such discrimination by arguing that Scientology was neither a religion nor a philosophical community and that, as a consequence, Scientologists could not avail themselves of the rights set forth in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and in article 18 of the International Covenant on Civil and Political Rights.

72. The representatives of Scientology provided very detailed documentation, a summary of which follows, in which the terms and expressions used are those employed by the Scientology representatives:

(a) Decision dated 6 June 1997 by the ministers of the interior of the 16 Länder to place Scientologists under national surveillance by the Office for the Protection of the Constitution for a period of one year, despite the lack, according to the Scientology representatives, of evidence linking the Church of Scientology to any criminal activity.

(b) Blacklisting and boycotting of Scientologists at all levels of society, according to the Scientology representatives, under an insidious policy of exclusion launched, encouraged and approved by the German Government in order to stigmatize Scientologists and outlaw them from society, which, in their view, amounts to religious apartheid (cf. use of declaration forms described as "sect filters", called for and recommended by the administration, requiring individuals and firms to declare that they are not Scientologists, do not sympathize with Scientology and reject its teachings, in particular in order to be recruited or to keep a post in a firm, or even, in Bavaria, in order to enter the civil service, to join a political party, trade union, social or professional group or sports club or to be able to enter it, to sign a commercial or service contract, or to open a bank account or obtain a bank loan; publication of a decree by the Federal Minister of Labour depriving Scientologists of the right to run employment agencies; adoption of decrees prohibiting the circulation of Church of Scientology publications, adoption of measures to prevent the sale of real estate to the Church of Scientology in Hamburg; discrimination against Scientology activities, particularly through the non-availability of public subsidies, contracts and public halls).

(c) Information programmes for teachers, parents, students, police officers, judges, procurators, prison staff, health workers, and chambers of commerce and industry and for the public in general, providing, according to the representatives of the Church of Scientology, incorrect and unscientific information, all of it unfavourable to the Church of Scientology and its members, and creating a climate of intolerance reflected in particular in physical and verbal harassment of Scientologists' children in schools, and indeed their expulsion, even from kindergartens.

(d) Incidents involving violence, harassment, intimidation and threats to Scientologists. [End of summary of the Scientology representatives' written submissions presented and commented on orally to the Special Rapporteur.]

73. To the Special Rapporteur's questions on the explanations for the situation as described by the Church of Scientology, the Scientology representatives said that since reunification Germany had been undergoing an

identity crisis, that in an increasingly secular world the major Churches were losing members and encountering financial difficulties, whereas the minorities, including Scientology, had an increasing following and, as new religions, were running into opposition.

74. On the question of the situation of members of the Church of Scientology, its representatives explained that any member was free to leave the Church, that he was not obliged to abandon his family and society, and that his financial contributions were voluntary. The existence of punishment camps in the United States was denied, and it was explained that they were in fact rehabilitation centres for Scientology members. The representatives added that, despite 10 years of inquiries into Scientology in Germany, it had not been possible to establish any proof of any criminal activity.

75. Concerning the Bundestag Study Commission, the Scientology representatives stated that they had been invited to appear before it, but they had laid down certain conditions, namely, that the Commission's files on them should be made available so that they could answer any allegations. Since that condition had not been met, they had decided not to appear before the Commission, but to apply to the courts in order to obtain the files in question. According to the Scientology representatives, it was essential that their Church's case should be given due consideration in a fair trial based on the facts, so that an objective decision could be reached. They further stated that the members of the Commission had already decided that Scientology was not a religion.

76. In his interviews with the authorities, the Special Rapporteur collected a great deal of documentation and very detailed explanations on the subject of Scientology. As far as the Federal Government's position is concerned, it considers that the Scientology organization only calls itself a church as a front behind which it pursues its economic interests. From what has been said by the founder of Scientology, Ron Hubbard, and by Scientology itself, not to mention the accounts of former members, it chose to call itself a religion, according to the German authorities, first, in order to avail itself of the legal and tax advantages enjoyed by religious communities, and secondly, in order to sell its products better (e.g. management training, business management know-how, etc.) and to be able to smear any critics by talking about persecution of a church (for example, in connection with a Scientology campaign, the measures taken against it by Germany were compared to the Nazis' attitude to the Jews). The Federal Labour Court, for its part, decided that the Scientology organization was a commercial enterprise (see I.C).

77. However, according to the German authorities, the question whether Scientology can be classified as a religion or not can be left aside; the important thing is respect for the existing legal order. According to the German representatives, the measures taken with respect to Scientology are simply designed to protect citizens and the liberal democratic order. On 6 June 1997, the Conference of Ministers and Senators of the Interior of the Länder concluded that the legal conditions were met for Scientology to be kept under observation by the services responsible for the protection of the Constitution. Under article 3 (1) of the Federal Law on the Protection of the Constitution, the Federal Office for the Protection of the Constitution is required to keep under observation tendencies directed against the fundamental

democratic and liberal order, or the existence or the security of the Federal Republic or a Land, or aimed at illegally attacking the constitutional organs of the Federal Republic or a Land or their members. According to the German authorities, what has to be done first of all is to observe whatever tendencies may be evident in Scientology that are contrary to or incompatible with the basic democratic and liberal order. Under article 4 (1) of the Federal Law, such tendencies are specific forms of political behaviour - within or on behalf of an association of persons - designed to nullify one of the constitutional principles. The collection of information depends on the existence of real evidence, under article 4 (1) of the Federal Law. According to established precedent, real evidence within the meaning of the Federal Law is present when there are circumstances making it reasonable to suppose that such tendencies exist and hence requiring further research. It suffices for the body of available evidence taken together to imply the existence of the tendencies in question, even if no individual piece of evidence is enough in itself. Furthermore, mere presumptions or suppositions that there could be tendencies going against the basic democratic and liberal order are not enough. The term "real evidence" allows some room for the exercise of judgement in its interpretation, but as an undefined legal concept it is entirely subject to the judge's discretion. The Conference of Ministers and Senators of the Interior of the Länder considered that there was real evidence about Scientology implying tendencies directed against the basic democratic and liberal order. According to the authorities, this evidence is to be found in the use made of Scientology publications, in statements by ex-Scientologists and in information obtained in judicial proceedings at the national and international levels, from which the following objectives may be inferred: according to the authorities, Scientology gets a hold not just over its members, through immoral and illegal techniques of psychological manipulation and repression, but also over the State and society. There is real evidence to show its intention of establishing a Scientological society (in particular, a Scientological legal system) and dominating the existing order by tyranny and despotism.

78. The measures for keeping scientology under observation are designed to check whether the evidence found can be confirmed or invalidated. The Conference of Ministers and Senators of the Interior of the Länder will therefore review, in a year's time, the question whether or not Scientology should continue to be kept under observation. The authorities have pointed out that being under observation was not preventing Scientology from pursuing its activities and that the services responsible for the protection of the Constitution did not have police powers in performing their duties and could not carry out enforcement measures such as searches, hearings and seizures. According to the German representatives, the charge made by Scientology that the purpose of keeping it under observation is merely to prepare for banning it is pure speculation.

79. With regard to the measures taken in Bavaria, the authorities explained that they were directed against the system of Scientology and not against individuals in need of counselling and assistance. They added that an individual's beliefs were not the business of the State, which had to react when the freedom of the individual or democratic principles were threatened. Since 1 November 1996, candidates for jobs in the Bavarian civil service have to state in a questionnaire whether they have relations with scientology. The

purpose of this questionnaire is to check or see whether the candidate displays the necessary loyalty towards the State and if he conforms with the democratic order. According to the authorities, any candidate who has relations with Scientology is entitled to an interview at which he has a chance to demonstrate that he is fit to work in the civil service. There is thus no question of all Scientologists being automatically excluded from the civil service. The point is not to establish that the candidate has a "faith" or an ideological commitment to the teachings of L. Ron Hubbard, but to see how far the candidate may let the organization control his thinking and behaviour and how far it actually does so. The claim that Scientologists are persecuted because of their "religion" is also refuted by the fact that there are Scientologists employed in Bavaria as civil servants. The use of protective declarations in the award of public contracts in certain specific fields (business advisory services, staff training and management, in-service training and seminars, consultancy, software development and maintenance, project development and supervision, research and development) serves to protect public services against any infiltration by Scientology. It is thus incorrect to assert that firms managed by Scientology are without exception excluded from the award of public contracts. The Bavarian Cabinet agreed on 8 August 1996 to refuse to give any State support or assistance to events having a relationship with Scientology, or to withdraw all support if the fact of Scientology participation was only discovered later. In point of fact, the denial of grants to Scientologist artists does not mean that they are treated differently and unconstitutionally because of their faith or their ideas. The decision to withhold support from an event is based not on the ideas protected by article 3, paragraph 3, of the Constitution, but on the behaviour and methods of Scientology, which are against the law. In addition, these artists have, without any restriction, the chance to organize events in Germany themselves, without public subsidy, or to collaborate with agencies working in the sector in question which are not eligible for subsidies. Finally, according to the German authorities, the violations of human rights alleged by Scientology to have occurred in the private sector are not verifiable.

80. According to the authorities, Scientology and its members are not subjected to any discrimination or intolerance, and still less to persecution, and all measures taken with respect to them are in accordance with the law. Furthermore, in Germany, as a State governed by the rule of law, Scientology is entirely free to challenge these measures in the courts. To a comment on the intemperate and passionate nature of the debate on Scientology, they replied that Scientology was conducting an aggressive campaign nationally and internationally with many different aims, including publicity. The German authorities also support the view that the problems should be dealt with case by case and not lumped together on a general basis. Several government representatives said that they were not in favour of banning Scientology, but rather of informing the public about it and about the judicial proceedings against it. Other representatives, particularly in Bavaria, said that they were in favour of banning Scientology, but only after establishing proof.

81. Many representatives of groups and communities in the field of belief and religion stated that they are at present suffering from the consequences of the conflict between the German authorities and Scientology, consequences which are reflected at the social level in suspicion or indeed rejection of any group which, because it is a minority group, is suspected of abusing

religion for financial gain. Representatives of religious minorities unanimously expressed their indignation at the statements and publicity put out by Scientology comparing Germany's attitude towards it to that of the Nazis towards the Jews or to religious apartheid.

82. Associations for victims of sects and psycho-groups stressed that Scientology was not a religion but a psycho-group, i.e. an agency for managing people's lives, whose abuses (financial exploitation of members through methods of psychical and psychological dependence) should be combated. They explained that they did not want Scientology to be banned, but that they did want full light to be thrown on its activities and its abuses to be limited.

III. CONCLUSIONS AND RECOMMENDATIONS

83. The Special Rapporteur devoted his attention to, first, legislation relating to tolerance and non-discrimination in the field of religion and belief (part I), and secondly, the implementation of that legislation and the policy in force (part II).

84. As regards legislation, the provisions of the Constitution fully guarantee freedom of religion and belief, and the provisions incorporated from the Weimar Constitution governing relations between the State, the churches and the religious communities are very comprehensive. They strike the right dynamic balance between religion and politics, avoiding the extremes of "anti-religious clericalism" and "religious clericalism" and allowing a symbiotic relationship, governed by principles of neutrality, tolerance and equity, between the State and religions. In this respect, it is noteworthy that the status of legal person in public law that may be accorded to cults and entails certain rights and advantages is related not to the religious nature of the cult but to whether it is in the public interest. This status ensures a form of cooperation with the State, but unlike other legal persons in public law, cults are not incorporated into the State structure. Where the principle of neutrality is concerned, and as the question of religion in State schools demonstrates, whether in the case of the crucifix or religious instruction, interpretation of the principle is not rigid and has to take balanced account, within the framework of the provisions of the Constitution, of the minorities and the majority, while respecting the freedom of belief of all.

85. On the question of the implementation of legislation and the policy in force, the Special Rapporteur focused his attention and analysis successively on religious minorities and other groups and communities in the field of religion and belief and on the Church of Scientology, in the context of their relations with society and the State.

86. In order to conduct a comprehensive and at the same time detailed analysis of situations, the Special Rapporteur considers it necessary to recall the characteristics of the overall framework within which German legislation and policy on religion and belief are implemented. Undeniably, Germany is today a democratic liberal State based on sound democratic institutions, legislation that conforms to international law and a vigorous international human rights policy. German democracy is also based on a

tradition of tolerance which, notwithstanding certain vicissitudes, is no less real. It is within, and thanks to, this overall framework that freedom of religion and freedom of belief can and do express themselves.

87. Where religious minorities are concerned, the Jewish community is generally satisfied with its situation and sometimes goes so far as to describe it as privileged in comparison with that in other democratic countries.

88. The Jewish community is able to flourish as a religious minority and enjoys very active political, institutional and financial support from the State. Not only have the German authorities adopted and implemented an immigration policy that is favourable to the arrival of Jews from the former USSR, to ensure the continued existence of the Jewish communities in Germany, but they also keep a very close watch on any manifestations of hostility towards the Jewish community.

89. The situation of the Muslim minority is markedly less favourable, although on the whole it is not unsatisfactory. Many Muslims in Germany are concerned about a number of issues and problems.

90. The first issue is granting of the status of legal person in public law which Muslims have applied for but not yet obtained. Admittedly, the fact that they do not enjoy this status in no way means that Muslims are denied the constitutional guarantees applicable to religion. However, this status makes it possible to institutionalize a form of cooperation with the State with the common aim of dealing with the same group of people. In conformity with article 140 of the Constitution and with German case law, the Muslim community satisfies the criteria regarding its statute, the size of its membership, the guarantee of permanence and respect for the legal order of the State. In view of the pragmatic approach to this issue shown by German officials during the Special Rapporteur's visit, and as it is not possible to treat Islam in the same way as a Christian Church or for it to be represented by an authority, the Special Rapporteur believes that it would be useful to hold broad consultations with Muslim organizations with a view to granting the status of legal person in public law to those that agree to cooperate with the State. This would create a momentum vis-à-vis the other organizations and it would be spelled out that a distinction between a legal person in public law and community with the status and advantages of a legal person in public law might usefully be envisaged. Practical, pragmatic, and hence operational solutions cannot be excluded unless they have been actively sought, tried out or desired.

91. In view of the wish to introduce the teaching of Islam into State schools in order to provide genuine religious instruction free from indoctrination and regimentation, granting public status, or at least its equivalent, would be extremely useful. This legal status, together with the rights and advantages associated with it (which include public funding), would enable the Muslim minority to enjoy greater independence from foreign influence. It would offer a better guarantee that the teaching of Islam would convey values of tolerance and openness towards religious diversity and would ultimately ensure better integration of Muslims within German society, thereby halting any drift towards exclusion or isolation. This necessary integration

of Muslims, as distinct from assimilation, would be an essential tool in resolving difficulties, such as the occasional opposition between part of the population and Muslims over plans to build mosques and other Muslim religious activities. Nevertheless, the image of Muslims among broad fringes of German public opinion is often negative. This is often attributable to a certain sector of the popular press which seeks sensationalism at any price and often, and almost implicitly, assimilates Muslims with extremists or even terrorists. This injustice towards Muslims tends to make problems more complex. The authorities are responsible for protecting the Muslim minority, for helping to combat this iniquitous portrayal of Muslims and for tackling the manifestations of hatred or intolerance towards them that occasionally marked the early years of this decade. Efforts to combat the ignorance propagated by a certain sector of the popular press and to strengthen education in tolerance could constitute priorities in this sphere.

92. As to other groups and communities in the field of religion and belief and the Church of Scientology, the Special Rapporteur wishes first of all to recall the relevant international law and jurisprudence.

93. In its general comment 22 of 20 July 1993 concerning article 18 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that the right to freedom of thought, conscience and religion is far-reaching and profound. It observed that freedom of thought and freedom of conscience were protected equally with the freedom of religion and belief. The fundamental character of those freedoms was also reflected in the fact that the provision could not be derogated from, even in time of public emergency, as stated in article 4, paragraph 2, of the Covenant. The Committee also emphasized that restrictions on the freedom to manifest religion or belief were permitted only if limitations were prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and that they must not be applied in a manner that would vitiate freedom of thought, conscience and religion. The Committee also considered that the "limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner". The Special Rapporteur also wishes to point out that international law provides no legal definition of the concept of religion and that the international human rights instruments make no reference to the concepts of sects or psycho-groups.

94. Against the background of a highly emotional international debate on sects or new religious movements, a debate which is not without interest for all the parties concerned, there is, as the Jehovah's Witnesses and the Mormons have observed, total confusion in which all groups and communities in the field of religion and belief are generally considered to be dangerous and using religion for other ends, whether financial or criminal. This confusion generates a climate of suspicion or even manifest or latent intolerance within society. In this regard, numerous representatives of groups and communities emphasized that the use of the terms "persecution", "official State policy of discrimination", "religious apartheid" and any comparison or parallel with Nazism to describe the situation in Germany in the field of religion and belief was "shocking", "inappropriate", "false", "unworthy" and "highly

reprehensible". In this connection there is no need to emphasize that any comparison between modern Germany and Nazi Germany is so shocking as to be meaningless and puerile.

95. According to the representatives of the groups and communities, with the exception of those of the Church of Scientology, there is, strictly speaking, no obstacle to the exercise of their activities. What they face can be described rather as a climate of suspicion, or latent intolerance, responsibility for which, in their view, lies with the major Churches, which are anxious to preserve their dominant religious status and stem the loss of members to other groups and communities in the field of religion and belief. The major Churches allegedly use their influence with the State for this purpose through its political and administrative institutions, and in particular through public information campaigns on sects, assistance for victims of sects and the Bundestag's Study Commission. This climate is allegedly maintained by the popular press and sometimes reflected among low-ranking civil servants. However, according to these same representatives, by satisfying the demands of the major Churches in the areas referred to above, the State is violating the principle of neutrality. In the view of the Church of Scientology, in addition to the measures described the German State practises a policy of discrimination against it, notably by denying its religious nature and thus refusing to grant it the rights and advantages linked to that status, such as tax exemption, and by applying discriminatory measures such as placing it under surveillance, public information campaigns on Scientology and measures to exclude it from society.

96. On the question of competition between the major Churches and other groups and communities in the sphere of religion or belief, the Special Rapporteur believes there is a need for an ongoing dialogue to avoid maintaining a climate of mistrust or even intolerance within society.

97. In this respect, it is worth mentioning that information should be expanded and diversified. It is only normal for the State to make available to the public information which is objective and as comprehensive as possible, so as to guard it against anything that might undermine its freedom of choice or expose it to unnecessary risks, on the understanding that the right to employ legal means must be preserved and guaranteed to all, particularly those who believe that their interests have been harmed by unsubstantiated or incorrect information.

98. Conducting public information and education campaigns untouched by any form of ideological or partisan indoctrination is one of the proper functions of any contemporary State. The State's obligation to remain neutral applies to the content of the information, which should not be discriminatory, defamatory or slanderous. As has been pointed out in Part II. C, the State's legitimate role in informing and educating citizens has to be performed within precise limits (principles of necessity, fair balance, equity, and value judgements based on facts that have been properly and fairly assessed) and in conformity with the law. In any event, remedies must remain available to individuals and groups wishing to dispute the content of official information and, where necessary, oppose its dissemination.

99. On the question of the granting of the status of legal person in public law, the Special Rapporteur found that many representatives of non-governmental organizations with whom he spoke were confused and associate such status with recognition of religious status. However, in conformity with German legislation and legal precedent, granting of the status of legal person in public law does not depend on the religious nature of the organization concerned but on whether it is in the public interest. For this reason, the Jehovah's Witnesses are recognized as a religious community by the authorities, who have not in fact granted them the status of legal person in public law. Similarly, although the Mormons have been granted this legal status, they are nonetheless listed in a brochure on sects published by the State. What is indisputable is that freedom of religion and belief may not as such be challenged.

100. Where tax exemptions granted by the State to legal persons in public law are concerned, the Special Rapporteur wishes to point out that these privileges do not extend to their industrial or commercial activities. For this reason, a religious community recognized as being in the public interest has to keep its commercial activities separate from its non-commercial activities. In other words, the fact that an organization is religious in character and has been recognized as being in the public interest does not automatically mean that all its activities are exempt from taxation.

101. Generally speaking, and in conformity with international law, State intervention in the field of religion and belief cannot involve taking responsibility for people's conscience and promoting, imposing or censuring a particular faith or belief. And no group or community may arrogate to itself responsibility for the conscience of individuals. The State is, however, responsible for ensuring observance of the law, and in particular of criminal legislation relating to the preservation of public order, embezzlement, breach of trust, assault and battery, failure to assist a person in danger, indecent behaviour, procuring, unlawfully practising medicine, kidnapping and abduction of minors, etc. In other words, the State possesses a sufficiently broad range of legal instruments to combat the various guises adopted by groups and communities cloaking themselves under religion, and to deal with any misunderstandings that arise in respect of groups and communities involved in matters of religion and belief. The various legal instruments must be rigorously enforced, particularly in the social and tax spheres, in a substantiated and non-discriminatory manner. Likewise, any community or group that considers that its rights and freedoms have been undermined by the State must avail itself of legal procedures, i.e. the courts. In both situations, it is of vital importance, when conflicts arise, for the State and communities and groups in the field of religion and belief to put themselves in the hands of the judicial system, which decides on the facts, rather than to court the passions of the masses or to act on the spur of the moment. These principles of behaviour must be unequivocally observed and applied, so that persons are properly informed and shielded from confusion, suspicion and intolerance. It is equally necessary for everyone to be aware and duly informed of the nature of any measures taken by the Government in the field of religion and belief, of their mandate and their objectives. The purpose, ultimate goal and function of the Bundestag Study Commission should be further clarified. It should also be emphasized that the Commission is not a court of law responsible for conducting trials. Similarly, where surveillance of the

Church of Scientology is concerned, it must be clearly and precisely recalled that the measures involved are for the purpose of observation and in no way prejudge the organization's nature and activities, in respect of which the evidence gathered by the authorities will be confirmed or invalidated or still under examination at the end of the observation period. The measures will in no way prejudge or replace the decisions taken by the courts. In any event, the law must be enforced and enable conflicts to be resolved.

102. The Special Rapporteur also believes that the State, beyond day-to-day management, must implement a strategy to prevent intolerance in the field of religion and belief. He believes that sustained efforts are required to promote and develop a culture of tolerance and human rights. The State must play an active role in developing awareness of the values of tolerance and non-discrimination in the field of religion and belief. Lasting progress may be achieved, mainly through education and above all the school, by ensuring that a human rights culture is imparted by school curricula and textbooks and by properly trained teachers. This educational strategy must not only propagate a culture of tolerance among the population, by inculcating values underpinned by human rights, but also develop awareness and reasoned and reasonable vigilance towards any form of abuse or threat in the field of religion and belief. There is a fundamental and immediate need for analysis and education to prepare young people to deal with questions of identity, religion and belief and to provide them with points of reference, models and reasons for living, so as to prevent them from falling victim to manipulation, extremism and fanaticism and to enable them freely to assume full responsibility for their lives. In this context, the Special Rapporteur also calls for an examination and analysis of the human condition today, which is frequently characterized by standardization, anonymity, depersonalization or even a vacuum, which religions, whose very nature makes them vehicles for human rights, have not always managed to fill. This phenomenon needs to be studied in order to identify its origins and possible remedies; this requires the involvement of all protagonists in the social, political and religious fields.

103. The Special Rapporteur also recommends a campaign to develop awareness among the media, and in particular the popular press, which all too often portrays matters relating to religion and belief in a grotesque, not to say totally distorted and harmful light. The recommendations made by the Special Rapporteur under the programme of advisory services (E/CN.4/1995/91, p. 147) should therefore be implemented, in particular training workshops for media representatives to develop their awareness of the need to publish information that respects the principles of tolerance and non-discrimination. These measures would also make it possible to educate and shape public opinion in accordance with these principles.

104. The views of Mr. Habib Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, regarding the advisability of introducing legislation which makes punishable any writings or statements fomenting hatred, particularly in the press, would also be extremely valuable.

105. The Special Rapporteur reiterates his recommendation (E/CN.4/1997/91, para. 103) regarding the organization of a high-level intergovernmental meeting to consider and arrive at a collective approach to sects and religions that respects human rights.

106. Finally, the Special Rapporteur again draws attention to the need to shield questions of religion and belief from the tension and clashes of interests, in particular political and economic interests, that exist in the international sphere so that the freedoms of religion and belief may be exercised with the serenity proper to them and not diverted from their purpose, for the benefit of every faith, of citizens and of society as a whole, and also of human rights.

Note

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Article 136

(I) Civil and civic rights and duties shall be neither dependent on, nor restricted by, the exercise of freedom of religion.

(II) The enjoyment of civil and civic rights and eligibility for public office shall be independent of religious faith.

(III) No one shall be required to disclose his religious belief. The authorities shall not have the right to inquire into a person's membership of a Church or cult except to the extent that a statistical survey ordered by law makes it necessary.

(IV) No one may be compelled to perform any religious act or ceremony or to participate in religious exercises or to use a religious form of oath.

Article 137

(I) There shall be no State Church.

(II) Freedom of association to form Churches or cults shall be guaranteed. The union of Churches or cults within the territory of the Reich shall not be subject to any restriction.

(III) Every Church or cult shall regulate and administer its affairs independently, within the limits of the law applicable to all. It shall confer its offices without the participation of the State or the communes.

(IV) Churches or cults shall acquire legal capacity according to the general provisions of civil law.

(V) Churches or cults shall remain corporate bodies in public law if they have been previously. The other Churches or cults shall be granted the same rights upon application if their statute and the number of

their members offer an assurance of their permanence. If several such Churches or cults in public law unite in one organization, that organization shall also be a corporate body in public law.

(VI) Churches or cults that are corporate bodies in public law shall be entitled to levy taxes in accordance with Land law, on the basis of the civil taxation lists.

(VII) Associations whose purpose is the joint cultivation of a philosophical ideology shall have the same status as Churches or cults.

(VIII) Such further regulations as may be required for the implementation of these provisions shall be the responsibility of Land legislation.

Article 138

(I) State contributions to Churches or cults, based on law, contract or special legal title, shall be redeemed by means of a Land regulation. The principles for such redemption shall be established by the Reich.

(II) The right to own property and other rights of Churches and cults, and also religious associations, in respect of their institutions, foundations and other assets destined for purposes of worship, education or charity are guaranteed.

Article 139

Sundays and legal holidays continue to be guaranteed by the law as days of rest and spiritual contemplation.

Article 141

To the extent that there is a need for religious services and spiritual care in the army, hospitals, prisons and other public institutions, the Churches and cults shall be permitted to perform religious acts, which shall be free from all constraint.